

ATTACHMENT 2

MILES CHEN LAW GROUP

**Costa Mesa Planning Commission Meeting
August 9, 2010**

1 COSTA MESA PLANNING COMMISSION MEETING 2

2 [START AUGUST 9, 2010 PC ITEM 3 MP3]

3 MR. JAMES RIGHEIMER: Okay, next item, item
4 number three.

5 FEMALE VOICE: Application number ZA-89-25
6 and ZA-92-10. Site address, 739 W. 19th Street.
7 Applicant, Jesse Garcia. Zone, C1.
8 Environmental determination, Exempt.
9 Description, from the meeting of July 12, 2010,
10 review, modification, or revocation of Minor
11 Conditional Use Permit Za-92-10 for a recycling
12 center with a maximum of two containers in a
13 commercial shopping center.

14 MR. RIGHEIMER: Staff? Mr. Lee.

15 MR. LEE: Yes, Mr. Chairman and
16 commissioners, the subject property is located
17 on the south side of W. 19th Street between
18 Wallace Avenue and Pamona Avenue. It contains a
19 multiple tenant retail shopping center. Major
20 tenants include Alturo Bravo Market [phonetic],
21 Lion's Den Night Club, and several food and
22 retail stores. The property is also bounded by
23 Wallace Avenue to the west, a Smart and Final
24 store to the east, residential properties to the
25 south, which would be to the rear of the

property, and to the north of property directly across W. 19th Street, several commercial properties including a pawn shop and a liquor store. The property is zoned C1 and has a general plan designation of general commercial. The property is also located within the city's 19 West Urban Plan. The specific application that's before you today is actually two separate minor conditional use permits that were processed for this property. The first one was zoning application ZA-89-25, the 89 signifying the year in which the application was first approved. This was the first minor conditional use permit that was processed and approved for Garcia's Recycling. At that time, the approval was for the recycling container to actually be directly adjacent to the W. 19th Street frontage. In 1992, an amendment to the application, ZA-92-10, was processed relocating that recycling facility to its present location that you see in the lower right hand portion of your screen. The city's municipal code does allow the commission to modify and/or revoke a planning or zoning application if the following conditions

are found to apply: the use constitutes a public nuisance, or the use does not comply with the conditions of approval. These two zoning applications were brought forward to the commission at the request of Planning Commissioner Mensinger on June 9, 2010. This item was originally scheduled for your July 12 meeting. However, at the July 12 meeting the applicant's legal counsel requested that the item be continued to this meeting in order to allow the applicant additional time to contact the neighbors, work with the neighbors, and at the commission's direction also develop some best management practices for the use of the facility. The reason that these issues came into play was that in the years that Garcia's Recycling has been operating at this facility, and especially with the recent operation beginning in July of 2009 to this date, several concerns have been brought to light regarding the operation of this use at its current location. One issue is that the use is not being operated in a manner to be deemed to be compatible with surrounding properties and uses.

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2 Specifically, concerns have been raised
3 resulting from noise related to the pouring of
4 recycled materials, cans and bottles, into the
5 containers at the facility, odors related to the
6 used beverage containers that are collected at
7 this facility, and loitering and customers
8 parking on adjacent properties to use the
9 recycling facility. An issue was also raised
10 regarding negative visual impact due to the
11 excessive signage that was on the containers
12 that you can see in these photographs as well as
13 a lack of property maintenance that you can also
14 see in these photographs. The containers at
15 this location generally have a battered
16 appearance, and the landscape planners
17 surrounding the use have not been adequately
18 maintained as a result of the high use of the
19 facility by its customers. Also, because of the
20 high demand by customers for this facility, it
21 necessitated the staging of a truck in addition
22 to the existing recycling container that's on
23 the property. As I indicated, since July 2009,
24 staff has been working with the applicant to
25 resolve a lot of these issues. And attached in

your original July 12, 2010 staff report is a summary of the efforts staff has undertaken as well as the applicant/operator has undertaken to try to resolve the issues at this facility.

However, it is staff's opinion that many of the issues still remain unresolved. According to city records, the city has had no complaints related to noise, odor, loitering, property maintenance with regards to the other recycling facilities that are located within the city of Costa Mesa. These are some additional

photographs of the Garcia's Recycling location, and these are photographs that show the other locations in the city, the recycling center at Orange Coast College in the upper left hand corner of your screen. Recycling facility for Earth Wise at the Stater [phonetic] Brothers Market at Newport and 22nd in the middle upper portion of the screen, and of course another photograph of Garcia's Recycling on the right hand portion of your screen, and the existing recycling facility at Bonds [phonetic] Market Shopping Center on E. 17th Street, which is at the bottom portion of your screen. In your

1 COSTA MESA PLANNING COMMISSION MEETING 7
2 original July 12 planning commission staff
3 report, staff presented three alternatives. One
4 alternative is to revoke the original zoning
5 application, ZA-89-25, and modify the conditions
6 of approval for ZA-92-10. We had recommended
7 several additional conditions of approval, which
8 is also incorporated in one of the alternative
9 resolutions in your packet this evening, in
10 order to minimize and reduce the impact of the
11 operational facility to surrounding properties.
12 The second alternative is to revoke both minor
13 conditional use permits, ZA-89-25 and ZA-92-10.
14 The reason that staff in both instances is
15 recommending revocation of the original 1989
16 minor conditional use permit is, as I indicated,
17 that was for the old location of the recycling
18 facility right on the 19th Street frontage, which
19 of course no longer applies, because that
20 condition use permit was superseded by the one
21 in 1992. The second alternative would be to
22 actually revoke both conditional use permits
23 based upon the finding that the property
24 constituted a public nuisance. Included in your
25 packets this evening is actually an addendum

1 COSTA MESA PLANNING COMMISSION MEETING 8
2 memorandum that was printed on yellow paper that
3 actually incorporated some additional findings
4 that were reflected in the original July 12
5 planning commission staff--

6 MALE VOICE: Where was that again?

7 MR. LEE: It's your supplemental memorandum
8 on the yellow sheet. It's a revised resolution,
9 if the commission chooses to revoke both minor
10 conditional use permits with some additional
11 findings that were incorporated reflecting the
12 items that were discussed in the staff report.
13 And the third alternative is to basically
14 receive and file the report, which basically
15 would mean the commission would take no action
16 to either modify or revoke the minor conditional
17 use permits and would basically allow the
18 facility to continue to operate as is. For your
19 packets this evening, we did prepare an updated
20 memorandum that reflects some of the issues that
21 the legal counsel for Garcia's Recycling raised
22 in their letter dated July 12, 2010.
23 Specifically, there are two items that the
24 attorney raised in the letter that I do want to
25 address this evening. The first is that the

1
2 applicant's legal counsel made a statement in
3 the letter that basically if the commission were
4 to take the action to revoke both of the
5 Garcia's Recycling minor conditional use
6 permits, the alternative two, that basically two
7 convenient zones would be in violation of the
8 state law with regards to recycling. It's known
9 as the Bottle Bill. Staff did contact a
10 representative of Cal Recycle, which is the
11 California agency that does oversee recycling
12 centers in the area. They did provide us this
13 exhibit which shows the convenient zones in the
14 immediate area of Garcia's Recycling. By
15 further definition, a convenient zone is how Cal
16 Recycle sets up the criteria for determining
17 whether a recycling facility needs to go into a
18 certain area based upon a number of supermarkets
19 that are in that area. As you can see in this
20 exhibit, in addition to Garcia's Recycling,
21 which is this actual symbol here, is the
22 recycling center at the Bonds Market, which is
23 this symbol here. As you can see, the
24 convenient zones actually overlap in this area,
25 and according to Cal Recycle, if the commission

1 COSTA MESA PLANNING COMMISSION MEETING 10
2 were to take the action to revoke both minor
3 conditional use permits, it would not results in
4 what's called an un-served convenient zone by
5 state definition, because the area would
6 continue to be served by the existing recycling
7 facility at Bonds Market. Furthermore, if you
8 go to the frequently asked question page on the
9 Cal Recycle website, they also state on their
10 website that multiple overlapping convenient
11 zones can be served by a single recycler. The
12 second issue the applicant's legal counsel
13 raised in their letter was that in fact if the
14 commission were to take the action to revoke
15 both minor conditional use permits, it would
16 potentially compromise the city's integrative
17 waste management plan. The staff did contact
18 the Cost Mesa Sanitary District, which of course
19 is involved in overseeing the integrated waste
20 management plan and did confirm that in addition
21 to independent recyclers like the Garcia's
22 Recycling, the Orange Coast College, and other
23 recycling facilities, the city of Costa Mesa
24 Sanitary District does in fact, as part of the
25 waste division program, does recycle items out

1 COSTA MESA PLANNING COMMISSION MEETING 11
2 of the regular waste stream and diverts those
3 materials to a recycling facility. The actual
4 documentation is attached to your staff report
5 that's included in today's packet. And we also
6 did receive a separate written confirmation from
7 the Costa Mesa Sanitary District also stating
8 that they do provide their own recycling in
9 compliance with the state regulations for waste
10 diversion.

11 MR. RIGHEIMER: Mr. Lee, that's the August
12 9th letter, 2010, from the Costa Mesa Sanitary
13 District?

14 MR. LEE: Yes, that is correct.

15 MR. RIGHEIMER: Okay. I want to just put
16 that in the record and make sure that the
17 applicant has a copy of that.

18 MR. LEE: Yes, that is correct.

19 MR. RIGHEIMER: Okay, thank you.

20 MR. LEE: So that basically brings you up to
21 date on the status of the continued hearing or
22 the review of zoning application ZA-89-25 and
23 ZA-92-10. This concludes my presentation. I
24 can respond to any questions any of the
25 commissioners may have.

1 COSTA MESA PLANNING COMMISSION MEETING 12

2 MR. RIGHEIMER: Commissioners questions for
3 staff.

4 MR. COLIN MCCARTHY: Mr. Chair.

5 MR. RIGHEIMER: Commissioner McCarthy.

6 MR. MCCARTHY: I'm looking at the new
7 proposed findings, and it mentions the city's
8 2000 general plan and the fact that 19th Street
9 is in the urban path, quote, unquote. What is
10 that referring to?

11 MR. LEE: W. 19th Street is designated as
12 what is known as an Urban Path. In other words,
13 it's a major arterial, where it's targeted for
14 overall improvement and enhancement. Of course,
15 the city undertook a beautification project
16 several years ago with the repaving and the new
17 light standards and basically new development
18 also has to comply with development standards in
19 terms of landscaping, building architecture,
20 things of that nature. So that's basically what
21 that's making reference to.

22 MR. MCCARTHY: Okay, and then my other
23 question, and I don't know if this is for you or
24 for counsel, Municipal Code Section 1329, which
25 provides a basis for the modification and

2 revocation of the CUP provides an or. There's
3 the public nuisance or the failure to meet the
4 conditions, correct?

5 MR. LEE: Yes, that's correct.

6 MR. MCCARTHY: It's not a requirement of
7 both. You don't need to find their not meeting
8 their conditions of approval and it's a public
9 nuisance.

10 MR. LEE: That is correct.

11 MR. MCCARTHY: So it could be found by this
12 body to be a nuisance and modified or revoked,
13 or it could be found to be not operating within
14 the conditions of approval and modified or
15 revoked, correct?

16 MR. LEE: Yes, that is correct.

17 MR. MCCARTHY: Okay. Thank you, Mr.
18 Chairman.

19 MR. RIGHEIMER: Commissioners.

20 MR. SAM CLARK: Mr. Chair.

21 MR. RIGHEIMER: Vice Chair Clark.

22 MR. CLARK: Mr. Chair, I'd like to ask
23 counsel a couple of questions with regards to
24 the letter and/or packet that we received from
25 Ms. Chen dated August 6. Mr. Adams, on page

1 COSTA MESA PLANNING COMMISSION MEETING 14
2 two, item number two, she references revocation
3 of the Garcia Recycling Conditional Use Permit
4 is unjustified and would amount to an abuse of
5 planning commission discretion and then sites
6 Goat Hill Tavern versus City of Costa Mesa.
7 Could you comment on that for me?

8 MR. ADAMS: Yes. Goat Hill Tavern is a much
9 more complicated case than what is indicated in
10 the findings here. The finding of whether it is
11 a public nuisance is not a legal conclusion.
12 That is a factual conclusion that this
13 commission has within their purview to make.
14 Goat Hill Tavern is a completely different type
15 of case. It was based on different issues, and
16 there's nothing there that I would say prevents
17 you from looking at this matter and making the
18 determinations that you need to make.

19 MR. CLARK: Okay. And then, item number
20 three she mentions revocation of the permit is
21 subject to CEQUA, California Environmental
22 Quality Act. Could you comment on the accuracy
23 of that as well?

24 MR. ADAMS: Well, there is a CEQUA review,
25 and the staff has addressed that in the report.

2 There's an exemption applied.

3 MR. CLARK: Thank you very much.

4 MR. RIGHEIMER: Commissioners, are there
5 questions for staff? I have a question, Mr.
6 Lee. I'm sorry.

7 MR. STEPHEN MENSINGER: Mr. Chair.

8 MR. RIGHEIMER: Commissioner Mensinger,
9 please.

10 MR. MENSINGER: Mel, this is a question for
11 you. When Garcia's originally received their
12 CUP for recycling wasn't there a facility
13 located in the back of the shopping center,
14 toward the houses?

15 MR. LEE: Yes. Actually, the 1989 minor
16 conditional use permit was for the location
17 along the W. 19th Street frontage. What had
18 happened was they had actually moved the
19 containers to the rear of the property, which of
20 course resulted in complaints from the neighbors
21 that are immediately butting into it to the
22 south. So as a result of that, that is what led
23 to the 1992 revision that basically put it out
24 back towards the front of the street but at the
25 location that it's located at today.

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2 MR. MENSINGER: Second question, in 2000,
3 this item was pulled up it looks for review, the
4 CUP was pulled up for review by the planning
5 commission. Do you have any information on
6 that?

7 MR. LEE: I did see in the packet a request
8 to bring it up for review. Actually, I'm not
9 certain if that review ever went forward.
10 Perhaps at that time the applicant had modified
11 their operation to address whatever issues were
12 in effect at that time. But I was not able to
13 actually find a record where that request to
14 bring it before the commission was actually
15 brought forward to the commission.

16 MR. MENSINGER: And the third question, as
17 it relates to Garcia's, it's my understanding
18 that the counsel for Garcia's came forward about
19 a year ago asking for an expansion of their
20 facility. Can you enlighten us as to what the
21 request was a year ago?

22 FEMALE VOICE: Chair and commissioners, the
23 request was just to address the violations that
24 staff had said they were in on the property. It
25 was not to expand it.

2 MR. MENSINGER: Okay. Is the volume of
3 recyclables today the same as it was when they
4 originally received their CUP. Is it the same
5 operation?

6 MR. LEE: It is the same operation in terms
7 of the number of containers, yes.

8 MR. MENSINGER: Okay. Very good. Thank
9 you.

10 MR. RIGHEIMER: Okay, the question I have,
11 and I think you just touched on it. The May 22
12 letter of 2000 that went to Garcia looked like
13 it was generate from staff, signed by Wullah
14 [phonetic]. Here, and it basically was telling
15 them to, discussing their MCUPS. However, the
16 findings used to justify the MCUPS can no longer
17 be made and the conditions approved are not
18 consistently complied with. Therefore, the
19 recycling needs to be discontinued. What you're
20 saying is we have no record of what happened
21 after that.

22 MR. LEE: That's correct.

23 MR. RIGHEIMER: Okay, and then on page 22
24 we've got a spreadsheet here that shoes the
25 amount of recycling done for aluminum cans,

1 COSTA MESA PLANNING COMMISSION MEETING 18
2 plastic, HDPE number two, and glass. Where did
3 that document come from?

4 MR. LEE: This document was supplied by the
5 applicant's legal counsel, so they can probably
6 provide information as where this information
7 came from.

8 MR. RIGHEIMER: Okay. It came from the
9 applicant's counsel.

10 MR. LEE: That's correct.

11 MR. RIGHEIMER: Okay. Okay, any other
12 questions for staff?

13 MR. MENSINGER: Mr. Chair.

14 MR. RIGHEIMER: Commissioner Mensinger.

15 MR. MENSINGER: Mel, just so I understand
16 the landscape here, Mr. Banella [phonetic] is
17 the owner of that shopping center. Is that
18 correct?

19 MR. LEE: Yes, that's correct.

20 MR. MENSINGER: Okay, and is it customary
21 for a recycling center like Garcia's to have a
22 rental agreement with Mr. Banella to lease that
23 space?

24 MR. LEE: Yes, a lease agreement, yes.

25 MR. MENSINGER: Is that public record, do

2 you know?

3 MR. LEE: We do not have a copy of that
4 least agreement, no, so it would not be part of
5 the public record.

6 MR. MENSINGER: Okay, thank you.

7 MR. RIGHEIMER: Any other questions for
8 staff? Okay, I'm going to report any ex parte
9 communications. Anybody met with or talked with
10 the applicant or any other neighbors in the area
11 at all since the last meeting? None? Okay.

12 MALE VOICE: Mr. Chair, I did speak with a
13 couple of neighbors in the area.

14 MR. RIGHEIMER: Okay. Anybody else speak
15 with some neighbors in the area. You don't have
16 to say you spoke. We have to say we spoke.
17 It's okay. You're allowed to speak to us.

18 MALE VOICE: Mr. Chair, I believe I received
19 a couple of emails.

20 MR. RIGHEIMER: Emails. I think I also
21 received, and those would be in the record.

22 MALE VOICE: As did I, Mr. Chair.

23 MR. RIGHEIMER: Okay, thank you. Okay, I'm
24 going to go ahead and open the public hearing.
25 Do we have the representative of Garcia's here?

2 Yes, please. You can come around. It's a
3 little easier. You get a side profile on TV.
4 You're looking good.

5 MR. STEPHEN MILES: Good evening, Mr.
6 Chairman, members of the commission. Stephen
7 Miles on behalf of Miles Chen Law Group. We
8 represent Garcia Recycling. Just by way of
9 protocol, I'm not aware of how much time
10 allotment I have, but I'd like to start with
11 some introductory comments and concepts and hand
12 it over to my partner, Patricia Chen, to kind of
13 get into the nuts and bolts.

14 MR. RIGHEIMER: Yes, we're not going to
15 limit the time that you have in there. Just
16 understand, you know, if it goes really long,
17 you know.

18 MR. MILES: Great. Thank you.

19 MR. RIGHEIMER: Go ahead.

20 MR. MILES: I'm going to talk about three
21 main topics. I'm going to get into the
22 procedure of the proceeding that is before us
23 today. I'm going to talk about the underlying
24 land use law that applies with respect to the
25 review of a conditional use permit. I'm also

going to touch on the evidence that has been presented in this case and some of the evidentiary standards that apply to the conditional use permit. My partner, Patricia Chen, is going to go into more detail on that. And then, I'm going to finish with the California Environmental Quality Act, taking into consideration the comments from your deputy city attorney. I'll address that issue in this context of a conditional use permit that implicates the unknown of four million pounds of solid waste. So to begin, just so we understand, the Goat Hill Tavern case was referenced. And basically, besides saying that it's a complicated case, the reality is that it's a seminal decision. It's somewhat ironic that it was this fine city that brought us that decision. But it is the seminal decision on conditional use permits, and it's important, I'm also a municipal attorney, and I find that sometimes public officials, elected and non-elected public officials, often confuse the distinction between issuing a use permit and what occurs once it is issued. And that's

2 really one of the legal concepts, the tenants
3 that Goat Hill Tavern addressed, which says that
4 once that conditional use permit is issued, you
5 know, up to that point this commission has full
6 discretion. It can condition it. It can weight
7 evidence. It can decide everything it wants to.
8 Once that use permit is issued, it then becomes
9 a fundamental vested property right of the
10 permit holder. And so the rules change. The
11 rules change with respect to the review of it,
12 the revocation, the modification of it. And the
13 rules change with respect to the way a court
14 will review the action of this commission with
15 respect to that permit. This proceeding is a
16 quasi-adjudicative proceeding. It relates to
17 that permit that's held by an individual. It's
18 not legislative. You don't get that same
19 deference that you would otherwise be accustomed
20 to in the issuance of a permit. I just wanted
21 to point that out, because that's kind of an
22 underlying tenant of what we're discussing. In
23 the staff report there are I believe two or
24 three recommended actions, and they relate to
25 these two minor conditional use permits, ZA-89-

1 COSTA MESA PLANNING COMMISSION MEETING 23
2 25 and ZA-92-10. There was an explanation about
3 why you can revoke one, and I don't quite
4 understand the rationale. But what I will say
5 is that those two use permits are not wholly
6 integrated in any way, shape, or form. There's
7 no supersede language in the '92 permit, so from
8 a legal position, Garcia Recycling will point
9 out that both of those permits run with the
10 land; both of those permits are fundamental
11 vested property rights; and neither one of them
12 should be revoked or modified without ample
13 evidence and justification by this commission.
14 Getting into the evidence that's been submitted.
15 We've been struggling with this. We were asked
16 to represent Garcia Recycling. We participated
17 in a public outreach. Every known complainant
18 was issued a letter, and surprisingly, and Pat,
19 my partner, will get into this in more detail,
20 we haven't received a single verification of a
21 complaint. We saw actually on a Public Records
22 Act request we saw that there was an email that
23 was referencing a complaint by Smart and Final.
24 There was a reference to an exhibit or an
25 attachment to the email. That attachment wasn't

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2 included in our Public Records Act materials, so
3 we've struggled with trying to figure out what
4 exactly is the essence of the complaint that has
5 driven this review proceeding. Fundamentally, I
6 would say that there is no evidence, let alone
7 substantial evidence, of a violation of the use
8 permit. And there certainly is nothing that
9 arises to a public nuisance that would justify
10 revocation. Whether or not there's
11 justification to work cooperatively with Garcia
12 Recycling to do some things, that's always good.
13 That's being a good neighbor, which I think
14 Garcia Recycling has been for the 21 years that
15 it has been operating without complaint under
16 its use permit. So what I'd like to point out
17 is the concept of celerity. And the best way to
18 describe celerity is the anecdote about getting
19 your hand in the cookie jar. And you ask should
20 you slap that wrist within a minute of getting
21 that hand in the cookie jar, a week later, a
22 year later, a decade later. What's the efficacy
23 of that? You want to slap the wrist
24 immediately. Usually you have a violation and
25 then you have a response. Seldom do you see,

1 and you certainly didn't see this in the Goat
2 Hill Tavern decision, that 20 years have gone by
3 and then all of a sudden we've got an issue with
4 the use permit. We think we have a public
5 nuisance or we have violations of the conditions
6 of this permit. I would implore upon this
7 commission to go back to the Goat Hill Tavern
8 decision. I know it's complex, but really one
9 of the distinctions, and chairman, you made
10 great distinctions about the In and Out Burger,
11 about how that In and Out Burger won't result in
12 a traffic, a queuing or a parking problem based
13 on the circumstances. The Goat Hill Tavern
14 decision interestingly had to do with a bar. It
15 had to do with a liquor license, a liquor
16 establishment. It didn't have to do with
17 something that's mandated by state law. See,
18 Garcia Recycling is a use permit that is also
19 fulfilling a state mandate. So that's a
20 distinction that you should look at between this
21 circumstance and the facts and the evidence in
22 Goat Hill Tavern, because if you read that
23 decision carefully, you'll see that the City of
24 Costa Mesa did a good job of documenting

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2 evidence. It just happened that the Harp, there
3 was a spurious relationship there that they
4 couldn't quite provide causation. And that's
5 what really happened in that decision. But the
6 evidence before you today, there's nothing that
7 even remotely goes to the amount of evidence
8 that was presented in the Goat Hill Tavern
9 decision by the City of Costa Mesa. And the
10 staff report will illustrate the fact that not
11 until July of 2009 was there even a culmination
12 of trying to figure out is there any evidence
13 about any complaint whatsoever. So again, that
14 goes to we've got a 1989 permit. In 2009 we
15 have a review, and if you look really at the
16 points that were made as of July 2009, there's
17 really nothing that directly says that there's a
18 violation or anything that amounts to a public
19 nuisance or a concern with the public health,
20 safety, and welfare. Moving to my third and
21 final topic is the California Environmental
22 Quality Act. We agree that typically the
23 review, modification, revocation of the use
24 permit is subject to a categorical exemption.
25 That makes sense, because you've already issued

an entitlement. You've probably gone through the environmental review, and there's really not much to talk about in terms of potential environmental impacts. CEQUA also provides for what we call the exception to the exemption, and that's codified at the CEQUA guidelines section 15300.2, and that's Title 14 of the California Code of Regulations. The concept of the exception to the exemption is that any codified categorical exemption recognizes that there can be unique circumstances where that exemption doesn't truly apply to the circumstance. And as I pointed out before, we're dealing with a use permit that's related to a state mandate for the reduction of solid waste material. I've noted that we're talking about annually four million pounds of recycled materials. CEQUA applies the concept of a baseline, the existing physical setting. To rely on a categorical exemption in the context of possibly revoking Garcia Recycling's permit would result in a violation of the California Environmental Quality Act by the mere essence that you have a physical baseline of a facility that is recycling four

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2 million pounds of material. If you take that
3 away, you're going to have to analyze where does
4 that four million pounds go? What is the carbon
5 footprint? Again, now that we have Assembly
6 Bill 32, we have to deal with carbon emissions,
7 greenhouse gas emissions. What is the
8 environmental net result of eliminating that
9 baseline? That's how the analysis should work,
10 and we've commented that we believe the
11 exception to the exemption applies. And under
12 the Bankers Hill decision I believe that there
13 are findings that this commission should make if
14 they intend to truly rely on a categorical
15 exemption. So again, with that I would, it is
16 an adjudicative proceeding. I would also like
17 to, because it is adjudicative, we would like to
18 reserve some time for rebuttal. Typically in an
19 adjudicated proceeding we have the opportunity
20 to address the complainants. We're having
21 difficulty finding out who that is or what that
22 is. But I'd like to turn this over now to
23 Patricia Chen, so she can go through in some
24 greater detail the legal standards that apply
25 and some of the details of the evidence that

2 we've compiled and lodged with the
3 administrative record. I do note that a lot of
4 the photographs, even though it was somewhat
5 anemic, some of those photographs are clearly
6 outdated. They have signage that doesn't exist
7 right now. So I don't know why outdated
8 photographs were being used, but I just would
9 like a note on the record that the photographs
10 that you saw are outdated and don't reflect the
11 existing physical setting at Garcia Recycling,
12 thank you.

13 MR. RIGHEIMER: Okay, and you will be able
14 to rebut any comments from the public or the
15 commission.

16 MR. MILES: Thank you, Mr. Chair.

17 MS. PATRICIA CHEN: Good evening,
18 commissioners. My name is Patricia Chen, also
19 with Miles Chen Law Group. I want to take this
20 time to kind of go through, as Steve said, in
21 more detail the legal standards that apply in
22 this case and then kind of go through the
23 evidence as we see it as to what the city has,
24 or at least what was provided to use, and then
25 also what we've provided to the city. So the

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2 legal standard regarding revocation are set
3 forth in Costa Mesa Municipal Code Section 13-
4 2901. And basically, the planning commission
5 may require the modification or revocation of
6 any planning application and/or pursue any other
7 legal remedies as may be deemed appropriate by
8 the city attorney if the planning commission
9 finds that the use as operated or maintained
10 constitutes a public nuisance or does not comply
11 with the conditions of approval. Then we go to
12 the definitions of what a nuisance is, and
13 that's set forth in civil codes section 3479,
14 which says anything which is injurious to
15 health, including but not limited to the illegal
16 sale of controlled substances or is indecent or
17 offensive to the senses or an obstruction to the
18 free use of property so as to interfere with the
19 comfortable enjoyment of life or property or
20 unlawfully obstructs the free passage or use in
21 the customary matter of any navigable lake or
22 river, bay, stream, canal, or basin, or any
23 public park, square, street, or highway is a
24 nuisance. Civil code section 3480 states a
25 public nuisance is one which affects at the same

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2 time an entire community or neighborhood or any
3 considerable number of persons, although the
4 extent of the annoyance or damage inflicted upon
5 individuals may be unequal. Going back to the
6 Goat Hill Tavern decision, which Steve has cited
7 and we've also cited in our documents submitted
8 to the city, once a use permit has been properly
9 issued, the power of a municipality to revoke it
10 is limited. At that point, as Steve pointed
11 out, it becomes a vested property right, and it
12 is entitled to protection. When a permittee has
13 acquired such a vested right, it cannot be
14 revoked unless the permittee fails to comply with
15 reasonable terms or conditions expressed in the
16 permit granted, or there is the compelling
17 public necessity. That is, there is a public
18 nuisance. We've scoured the documents that we
19 have in our possession with respect to the
20 evidence, and we've identified the following.
21 There's a letter dated November 17, 1992 signed
22 by seven individuals complaining of depreciation
23 of value of homes, transients, odors, unkempt
24 areas and unnecessary noise and trash. But I
25 wanted to note that this letter was written

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2 prior to Garcia Recycling's location to the
3 front of the parking lot away from the
4 residents. Then, there's an undated letter
5 signed by approximately 35 individuals urging
6 the city to revoke Garcia Recycling's use permit
7 stating basically the same things set forth in
8 the prior 1992 letter and saying that it's been
9 18 years, and the city ignored their 1992
10 complaint. Then, we received from the city at
11 the last hearing emails from Smart and Final
12 dated July 7 through 8 that actually refers to a
13 complaint letter that is not attached to the
14 email. Steve touched upon that. That's why I
15 think we may be struggling so much is because we
16 don't know exactly the basis of where the
17 complaints are coming from. But nevertheless,
18 in the correspondence that Smart and Final had
19 with the city, they actually, while they
20 complain of transients and they show pictures
21 showing the volume of folks who use the
22 facility, they also acknowledge that it is a
23 very busy center and removing it would not be
24 good for local businesses. And it is obvious
25 that a center at this location is an absolute

1 necessity. Also, there was testimony of an
2 individual at the July 12 planning commission
3 meeting complaining of the look of Garcia
4 Recycling, and I think this is kind of the crux
5 of what's going on, it's the visual impact. And
6 as the city has submitted an additional memo
7 today, it talks about the urban, I forgot what
8 the wording was. It was an urban pathway on 19th
9 Street. So I think that's kind of what we're
10 really getting at is the look of Garcia
11 Recycling. Now, in response to this evidence,
12 we point out in our submittal, and we're
13 reiterating that, we have a letter from Victor
14 Bonia [phonetic] dated July 21. He's the part
15 owner of the shopping center and the property
16 manager, and he says that he has not received
17 complaints, and that all that is visible from
18 the street is really the front of the truck and
19 the back of an unmarked container. There's even
20 a tree blocking the view. He also doesn't
21 believe that Garcia Recycle brings in transients.
22 He points out that there's a soup kitchen across
23 the street, which we've also pointed out in our
24 submittal along with pictures of that facility.
25

1 He also notes that Garcia Recycling keeps its
2 facility clean, and its employees are constantly
3 sweeping the area and picking up any litter. He
4 and his tenants have not found the noise to be
5 offensive, and they would be the ones most
6 directly affected by the noise and odors. And
7 he hasn't received any complaints about noise
8 from his customers. He also believes that
9 Garcia Recycling is located in an area of the
10 parking lot that does not cause a disruption to
11 the customers or the neighboring businesses. As
12 we pointed out, it's located in front of the
13 Lion's Den, which is a nightclub. So it's not
14 open during the day, so the parking lot is not
15 disruptive. Their activities in the parking lot
16 are not disruptive. WE also have a letter from
17 the neighboring businesses saying that they have
18 not felt that Garcia Recycling has disrupted
19 their businesses, and they are not offended by
20 the appearance of Garcia Recycling's operations,
21 nor have they complained of any noise, litter,
22 or homeless individuals. They also expressed,
23 as other individuals have during our public
24 outreach, that it's really unfair to blame
25

Garcia Recycling for the homeless when there's actually a soup kitchen across the street. We also have a petition signed by over 500 individuals indicating support for Garcia Recycling and agreeing that Garcia Recycling's operations are not disruptive to the surroundings or aesthetically offensive. And Garcia's services are important to the community. I thought it would be helpful to kind of give the more current pictures of Garcia Recycling. These pictures were taken basically in the last two weeks or so. And I thought it was important for everyone to see what it looks like when you're actually driving past Garcia Recycling. So you see it, this is driving I guess it would be west on 19th Street. Oh, east to west on 19th Street. And so you see Garcia Recycling, and I'm sorry I don't have a pointer, but that signage on the side of the containers is what it looks like now. It doesn't have the cash for cans sign that city staff had put up earlier. They have completely painted their containers as a result of working with the city to address some of those issues back in last

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2 year from July and in the fall of last year. So
3 this is what it looks like now and has looked
4 like for months. This is a picture looking
5 straight on at the facility, and all you really
6 see is the one truck, and there is a tree
7 blocking it. And then past the facility that's
8 what you look at as you are passing from west to
9 east. This is a side view of the facility, what
10 it looks like. And here are residents walking
11 to Garcia Recycling, and we pointed this out in
12 our last submittal back on I think it was July
13 12. You know, Garcia Recycling really serves
14 the community, and many, many residents walk to
15 Garcia Recycling. And in fact, these very
16 residents would not be recycling if Garcia were
17 not in the location that it's in, and they've
18 kind of expressed that to us. Here are photos
19 of other facilities. I know that Mel had put up
20 a couple pictures before of the other
21 facilities. These are also very recent, and
22 they also show the activity much like Garcia
23 Recycling. It's inevitable that there is going
24 to be some of the transactions occurring outside
25 of the containers themselves. This is the Next

2 Cycle micro site, and you can see the staging of
3 recyclable materials outside the container.

4 This is Earth Wise, also in Costa Mesa, and same
5 thing here. You have people standing in line.

6 It's just inevitable. And I think that is the
7 end of my slide show. I just wanted to make

8 sure that you were able to see the photos in a
9 little bit more depth instead of the copies.

10 I'm not sure how great they came out. So we

11 reiterate that we just don't think the evidence
12 is there for the city to be able to revoke the
13 permit. So we're happy to answer any questions.

14 MR. RIGHEIMER: Commissioners, any questions
15 for the applicant?

16 MR. MCCARTHY: Mr. Chair.

17 MR. RIGHEIMER: Commissioner McCarthy.

18 MR. MCCARTHY: When, the photos that you
19 showed of the facility, when were those taken?

20 MR. RIGHEIMER: Yes, we need one of you to
21 answer the questions. Yes.

22 MS. CHEN: They were taken in the last two
23 weeks.

24 MR. MCCARTHY: What time of day?

25 MS. CHEN: Jesse? Eleven o'clock or twelve

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2 o'clock in the midday during the busy time.
3 MR. MCCARTHY: That's fine, Mr. Chair.
4 Thank you.
5 MR. RIGHEIMER: Okay, any other questions
6 for the applicant?
7 MR. MENSINGER: Mr. Chair.
8 MR. RIGHEIMER: Commissioner Mensinger.
9 MR. MENSINGER: Is it okay if the applicant
10 comes up?
11 MR. RIGHEIMER: Well, whoever the applicant
12 wants to respond to--
13 MR. MENSINGER: [Interposing] I'd like to
14 ask Mr. Garcia some questions. I'm sorry, I
15 can't hear you. You need a mike.
16 MR. RIGHEIMER: Just come to the microphone
17 to answer.
18 MR. MILES: Mr. Commissioner, I think if we
19 can get the question, then we can as a team
20 decide who is the most appropriate--
21 MR. MENSINGER: [Interposing] Counselor, I
22 appreciate that. I really do. I realize your
23 counsel, but the applicant I think is Mr.
24 Garcia, and that's really the person that I'd
25 like to ask the question to.

2 MR. MILES: Correct, and we're his attorney,
3 and this is an adjudicated proceeding, so I
4 would like to know so that we can defer you to
5 the person that is going to give the best
6 response. I mean, it's just a matter of we've
7 all taken on different tasks.

8 MR. RIGHEIMER: Understand. City attorney,
9 can you give us what we need to do on that?

10 MALE VOICE: Mr. Garcia has chosen to be
11 represented by counsel here, so it's up to Mr.
12 Garcia whether or not he wants to have questions
13 asked of him or he wants his counsel to address
14 the questions.

15 MR. RIGHEIMER: Okay, thank you. Anything
16 else, Commissioner?

17 MR. MILES: [Interposing] We don't
18 necessarily, I'm not, we don't have a problem.

19 MR. RIGHEIMER: I understand. No problem.
20 No apology is needed.

21 MR. MILES: Thanks.

22 MR. MENSINGER: All right, question for you.
23 I'm going to ask questions through you for Mr.
24 Garcia. Is Mr. Garcia a Costa Mesa resident?

25 MR. JESSE GARCIA: I'm going to apologize